
THE INTERIM

DECEMBER 2002

HELENA, MONTANA

VOL. XIII NO. 19

TRACKING THE LEGISLATIVE SESSION ONLINE

Training Offered to State Agencies and the Public...The 58th session of the Montana Legislature will begin Jan. 6, 2003. Be prepared to track legislation affecting your agency or particular interest. Training for state agencies and the general public will occur on Dec. 16 and 19. Both sessions are in Room 102 of the Capitol from 9 a.m. to 11 a.m. The sessions are identical, so you need only attend one session. The training will cover two areas:

- The legislative branch's Internet interface to the Legislative Automated Workflow System (LAWS) for tracking legislation and the legislative process. This is how the public and state agencies can obtain timely information throughout the 2003 session. Up-to-date bill status, bill text, hearing schedules, journals, agendas, legislator information, and more are available online through LAWS.
- The ITSD-developed Oracle Bill Status Tracking System (BST) to track legislation and maintain internal annotations on legislation of interest. This system is only available to state agencies.

Training for LAWS, which provides the public access interface, will precede the agency-only training on BST. The LAWS portion will take about an hour and a half, with the last half hour devoted to BST. Seating is open, so larger agencies are asked to schedule some attendees for each session.

Another LAWS training session, geared specifically for the general public, will be held on Saturday, Jan. 4, 2003, from 10 a.m. to noon, in Room 102 of the Capitol. It will only cover the web interface portion of the LAWS system.

The legislative branch contact for the LAWS system is Jim Gordon, (406) 444-2493 or by email at jgordon@mt.gov. The ITSD contact for the Bill Status Tracking System is Barry Fox, (406) 444-5895 or by email at bfox@mt.gov.

TVMT: MISSION POSSIBLE

T Minus 36 and Counting...On the sixth of January, 2003, we go live in Helena. The TV vessel is on the launch pad, poised for take-off. We're putting the system through its paces: audio signals, video calibration, RF cable plant, codec, compression, modulators, plasma screen, XLRs and BNCs, streaming to desktop PCs, racking up bandwidth charges and putting power into the battery packs. Next on the list, character generation, which sounds a little spooky but all that means is building a readily accessible index to identify legislators on the television screen so that viewers know who's speaking at any given moment.

In addition to the gavel-to-gavel coverage described below and in previous **INTERIM** newsletters, TVMT will be crafting an hour-long condensed "digest" at the end of each week, to prime the pump for statewide distribution of the whole shebang on public television. At the Nov. 19 Legislative Council meeting, the message was clear: Ground control to major-domo Maly: Do it right, Dudley, or scrub that part of the mission. Roger that!

Fortunately, television production is not rocket science, and as far as I know, there's no such thing as O-rings in a video camera. There's a caveat in the middle of that sentence: as far as I know. Your correspondent has, not to put too fine a point on it, no credentials in this field of endeavor. Bill drafters don't generally arrive on the job with a hefty set of A/V skills, and this goes way beyond programming the VCR. My knees are knocking now: get a grip, keep it together, count it down to the zero hour.

Blast off...The 2003 session will be a proving ground for TVMT. A capitol-based production crew on contract from Helena Civic Television (HCTV) will routinely videotape two events simultaneously several times a day for the entire 90-day session. Daily coverage will include 2-4 committee hearings as well as House and Senate floor sessions. Proceedings in the House and Senate chambers, along with Room 303 (the old Supreme Court) will be covered using robotic cameras; other hearings will be captured using mobile video production carts with cameras on tripods. The TVMT project manager, in consultation with Legislative Services staff, the Legislative Council, committee chairs, and House and Senate staff, will determine which hearings and which bills will be covered on a week-to-week basis. The gavel-to-gavel style of production is governed by statute, with Legislative Council oversight (5-11-1111, MCA), so there won't be any monkeying around with the PZTizmos (pan, zoom and tilt gizmos) on the remote-controlled cameras. We'll be focused on the debate, not panning for napsters or any member's snack food habits.

Beaming Up & Over Digital Divides...The unedited televised proceedings will be distributed to TV monitors within the Capitol. HCTV will also feature live and tape delayed

coverage on for local area cable subscribers on Channel 11. Legislative Digest, an hour-long compendium of the preceding week's signal events, with scripted voice-overs but NO commentary, will be carried by Montana PBS, which reaches over 50 cable and broadcast stations in the state. Montana PBS will air the program Friday evenings and then repeat it on Saturday and Sunday. (Exact times TBA--check your PBS program guide or local listings.) This program may also be carried at different times by community access stations in Billings, Missoula, Great Falls, and Helena.

We are working feverishly to accomplish statewide distribution, but don't have the financial juice to pull it off just yet. At the time of this writing, we're negotiating with AT&T Media Services to get two-hour blocks of session activity on the Big Sky Channel (normally a vehicle for real estate advertising) in Billings, Butte, Missoula, and Great Falls.

With sufficient funding, mainly through program underwriting and in-kind support from private contributors, the gavel-to-gavel service and related programming will eventually be transmitted to a number of schools in north-central and eastern Montana over the VisioNet system as well as to other stations across the state via satellite uplink and downlink to cable head ends. TVMT programming may also be carried full-time by Montana PBS when it completes its digital conversion, a project mandated by federal policy and financed in part through a bond issue authorized by the 57th Legislature in 2001. Audio coverage of floor sessions and many hearings that will be streamed to capital campus desktop computers this session will in future be distributed to the "world wide web" over the Internet.

Event Horizons...The future of TVMT hinges on trust, performance, and affordability. Without trust in the integrity of the process, and that means the people making day-to-day decisions about what to cover and how to cover it, the service cannot thrive, or grow to fulfill the statutory mandate to cover all three branches of state government. To earn and keep this trust, the production crew, from the project manager on down, must perform consistently throughout the session. The equipment has to hold up to constant use over the 90 days, and stay up and running for the subsequent 18 months to cover interim committees. The delivery system has to work. The affordability of transmission and distribution to all citizens of Montana is a larger issue, but with a little help from the cable industry, the telecommunications sector, and a few other friends of good government, the day is dawning for broadly available public affairs programming on a year-round basis.

C-Span style coverage of the Legislature is full of challenges. Here at TVMT headquarters--a little bunker in the heating plant several hundred feet due east of the Capitol--we're ready to buckle up, hunker down, and deliver on the aforementioned trust that has been placed in the project by the Legislature and lobbyists alike. Last session, the production crew felt, at times, like crash test dummies. Things kept breaking; vendors and technicians kept twisting off. This time around, we are operating on a much more solid technical footing and with the realistic but still great expectation that TVMT is on a sure-fire trajectory toward a sustainable future as a public-private partnership...with wings. In the age of digital technology and satellite transmission, the sky is truly the limit.

TVMT will be a tool for helping to make Montana a 21st century community that understands itself and its place in the world.

- **A statewide public affairs network**, complementary to Montana PBS, feeding unedited material--bona fide reality TV--to community access and other cable stations throughout Big Sky Country.
- **A unique public-private partnership**, financed by lobbyists and their clients, foundations, consumers, and taxpayers.
- **A cooperative enterprise**, with grassroots support and non-partisan democratic governance.
- **An open window on state government**, and a conduit for important information about ourselves and the multi-state, transnational region we live in.

Research Analyst Stephen Maly is the TVMT Project Manager. His office is Room 111D in the Capitol. Phone (406) 444-3064, or send an e-mail to smaly@mt.gov

LEGISLATIVE FINANCE COMMITTEE

November Meeting Highlights...The Legislative Finance Committee (LFC) met on Nov. 19. Reports presented at the meeting can be found on the Legislative Fiscal Division (LFD) website at <http://leg.mt.gov/css/fiscal/default.asp>. The following are highlights of the meeting. For further information, check out the LFD website or contact Clayton Schenck at cschenck@mt.gov or at (406) 444-2986.

State General Fund Revenue Outlook...Staff reported that the projected deficit for the 2005 biennium is expected to be \$241 million rather than \$249 million as reported in the **Big Picture Report** at the October LFC meeting. The major differences are improvements in income and corporate tax revenue forecasts, which are partially offset by decreases in other revenue sources and the earmarking of a much greater share of the tobacco settlement funds (Initiative 146 approved by voters). For further information, contact Terry Johnson at tjohnson@mt.gov or at (406) 444-2986.

Potential Cost Overruns...Staff provided an update on potential supplemental requests for fiscal year 2003. These items are included in the governor's budget that was released on Nov. 15. The items include fire costs of \$9.1 million, Department of Justice litigation costs of \$0.3 million and prisoner per diem of \$0.3 million, Department of Public Health and Human Services - Montana Developmental Center cost overruns of \$0.9 million, Office of Public Instruction BASE aid/GTB of \$3.5 million, Commissioner of Higher Education costs of \$76,000, and \$1.6 million for a contingency for yet to be identified supplementals. The total of \$15.7 million is a \$10.1 million increase over the amount reported during the August special session. For further information, please contact Taryn Purdy at tpurdy@mt.gov or at (406) 444-2986.

LFC Approves Committee Bill Draft...The LFC approved a bill draft (LC 0023) for "housekeeping" legislation related to SB 495 enacted by the 2001 Legislature. SB 495 was legislation to enhance funding of schools and to stabilize the long-term growth of the common school trust fund. The "housekeeping" changes relate primarily to conforming the legislation to current practice and clarifying the use of common school trust mineral royalties. For further information, contact Roger Lloyd at rlloyd@mt.gov or at (406) 444-5385.

Another bill draft (LC 0012) was approved by the LFC that would allow certain legislative committees, with a two-thirds vote, to request attorney general opinions. Contact Taryn Purdy at tpurdy@mt.gov or at (406) 444-2986 for further information.

HJR 1 Mental Health Services Interim Study...The LFC approved the five bill drafts recommended by the HJR 1 Subcommittee at the October LFC meeting. For prior coverage of the proposed legislation see the November issue of **THE INTERIM**. For further information, contact Lois Steinbeck at lsteinbeck@mt.gov or by calling (406) 444-5391.

Analysis of the Executive Budget...The LFD is preparing its analysis of the Executive Budget, released on Nov. 15 by the governor. The LFD fiscal analysts began the analysis in the late summer and, as of this printing, are completing the narratives and tables that will appear in the *Legislative Budget Analysis, 2005 Biennium* for distribution and presentation during the first days of the legislative session. The budget analysis publication is a 4-volume set that includes:

- Volume I - summary, statewide analysis of the budget, various statewide fiscal issues, and reference material;
- Volume II - revenue estimates and economic assumptions used to derive the estimates; and
- Volumes III and IV - detailed budget analysis of each state agency.

These volumes provide a comprehensive look at state government from a fiscal perspective. Besides being the workbooks for the budget deliberations (particularly for the House Appropriations Committee, Senate Finance and Claims Committee, the various joint appropriations subcommittees, and the taxation committees), the books provide excellent reference material for all legislators seeking information about agency budgets and fiscal matters.

Following the end of the session, the LFD staff will prepare the *Legislative Fiscal Report, 2005 Biennium*, which will document the decisions made on fiscal matters during the 2003 session. While the budget analysis books will be available to legislators on the first day of the session, legislators and citizens with Internet access will be able to get an early look at the material during the last week of December on the LFD website at <http://leg.mt.gov/css/fiscal/default.asp>.

The Legislative Budget Analysis, 2005 Biennium should be posted as early as Dec. 22. In addition, a budget summary will be sent to all legislators in advance of the legislative session. The budget analysis report will be formally presented to a joint meeting of the Legislative Finance Committee, the House Appropriations Committee, and

the Senate Finance and Claims Committee at the beginning of the legislative session. For further information about the budget analysis report, please contact the LFD at 444-2986.

FIFTY-EIGHTH LEGISLATURE COMMITTEE ASSIGNMENTS

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TRANSITION ADVISORY COMMITTEE

Committee Reviews Alternative Supply and Aggregation Proposals...In September, the committee discussed strategies used by other states under transition to customer choice. In Oregon, the regulated utility offers a portfolio of products to its customers. A customer may select the standard offer, a market-based offer, including time-of-use metering, or a variety of renewable energy products. In Maine, the state's utility commission solicits bids to provide default service by customer class. Bids are not subject to prudence review, but the marketer is required to deliver electricity at the bid price. Massachusetts and Ohio provide for "opt-out aggregation." Local governments are allowed to assemble the electrical load for customers within its jurisdiction. The customer is part of the local buying group unless the customer specifically chooses another supplier.

At the Nov. 21 meeting, the committee reviewed bill drafts that would implement these strategies. Matthew Brown, Energy Program Director, National Conference of State Legislatures summarized the advantages and disadvantages of each proposal. The committee did not take action on any of the proposals. Brown also discussed his final report to the committee: *Electricity Policy Options for Montana*. The report is available on the legislative branch website at <http://www.leg.mt.gov/css/default.asp>, follow the "Committee" links.

Committee Approves Bill Drafts for Introduction...Last April the committee decided to introduce legislation that would maintain certain elements of HB 474 in the event that voters rejected the measure in November. Voters defeated HB 474 by a 60% to 40% margin. Whether they knew it or not, voters did not reject restructuring, but rather returned the law, in many respects, to what it was before the 2001 legislative session. The committee voted to submit, *without recommendation*, the following bill drafts for consideration by the 58th Legislature:

- LC 396: providing for the recovery of electricity supply costs.
- LC 397: allowing a customer to return to default supply, providing for customer choice, and maintaining default supply obligations beyond the transition period.
- LC 398: restricting the purpose of electric buying cooperative to supplying or promoting alternative energy and conservation programs.
- LC 399: extending universal system benefits charges to December 31, 2005.

The committee also requested a bill draft (LC 671) to revise the structure and function of the Transition Advisory Committee and rejected a proposal to set a renewable energy target of 7% of the default supply.

For more information about the committee, contact Jeff Martin at (406) 444-3595 or jmartin@mt.gov or Todd Everts at (406) 444-3747 or teverts@mt.gov.

LEGISLATIVE COUNCIL

Committee Recommends Legislation...The Legislative Council met on Nov. 19 to wrap up business for the interim. Members agreed to introduce the following legislation for consideration by the 2003 Legislature:

- revising the Legislative Council's appointment authority regarding interstate, international, and intergovernmental entities;
- requiring the Council to review draft legislation proposed by an agency or other entity not statutorily assigned to an interim committee or the Environmental Quality Council;
- clarifying that a standing committee may not meet between regular legislative sessions, except for committee meetings held in preparation for a special session;
- providing for an immediate effective date for all legislation enacted during a special session unless a different time is prescribed in the enacting legislation;
- modifying the districts from which members of the Districting and Apportionment Commission are selected; and
- providing for the redistricting of district courts while retaining the same number of judges.

The Council will meet again in January. For more information, contact Lois Menzies by phone at (406) 444-3066 or by e-mail at lomenzies@mt.gov.

INTERIM COMMITTEE FINAL REPORTS

The following list shows the titles of final reports of the majority of legislature's interim committees and the Environmental Quality Council. A few additional straggler reports will be completed, printed, and made available in the coming weeks. If you are interested in any of the reports, please check the Internet link listed under the report title or contact the Legislative Reference Center at (406) 444-2957.

Buy Now, Use Later: A New Approach to Paying for a College Education
 (Legislative Branch, Legislative Services Division - <http://leg.mt.gov>)

Highways and Means An Account of the Revenue and Transportation Interim Committee's Navigation of the 2001-2002 Interim (Legislative Branch, Revenue and Transportation Interim Committee - <http://leg.mt.gov>)

To Encourage Cooperation: Final Report of the State-Tribal Relations Committee (Legislative Branch, State-Tribal Relations Interim Committee - <http://leg.mt.gov>)

Town and Gown: Final Report of the Education and Local Government Interim Committee (Legislative Branch, Education and Local Government Interim Committee - <http://leg.mt.gov>)

Coal Bed Methane and Water Policy in Montana 2002 (Legislative Branch, Legislative Environmental Policy Office - <http://www.leg.mt.gov/content/publications/lepo/2002waterpolicyreport.pdf>)

The Electricity Law Handbook: A Montanan's Guide to Understanding Electricity Law (Legislative Branch, Legislative Environmental Policy Office - <http://www.leg.mt.gov/content/publications/lepo>)

Understanding Electricity in Montana (Legislative Branch, Legislative Environmental Policy Office - <http://www.leg.mt.gov/content/publications/lepo>)

A Guide to the Montana Environmental Policy Act (Legislative Branch, Legislative Environmental Policy Office - <http://www.leg.mt.gov/content/publications/lepo/2002mepaguide.pdf>)

A Guide to Montana Water Quality Regulation (Legislative Branch, Legislative Environmental Policy Office - <http://www.leg.mt.gov/content/publications/lepo/2002waterqualityguide.pdf>)

MEPA Public Participation Guide (Legislative Branch, Legislative Environmental Policy Office - <http://www.leg.mt.gov/css/lepo/mepa/default.asp>)

Sisyphus Is Alive and Well in Health and Human Services: Pushing the Policy Boulder Up the Fiscal Hill (Legislative Branch, Children, Families, Health, and Human Services Interim Committee - <http://leg.mt.gov>)

Equal Protection for Your Vote: Montana's Voting System and Vote Counting Process (Legislative Branch, State Administration and Veteran's Affairs Interim Committee - <http://leg.mt.gov>)

Legislative Branch Computer System Plan (Legislative Branch, Computer System Planning Council - <http://leg.mt.gov>)

Veterans' Affairs: A House Divided (Legislative Branch, State Administration and Veteran's Affairs Interim Committee - <http://leg.mt.gov>)

Access and Barriers to Health Care (Legislative Branch, SJR 22 Subcommittee of the Economic Affairs Interim Committee - <http://leg.mt.gov>. Available 1/1/03)

LEGISLATIVE COUNCIL ON RIVER GOVERNANCE

Prefatory Note: The Legislative Council on River Governance is made up of delegations of legislators from Washington, Oregon, Idaho, and Montana, and has been convened under the auspices of the Council of State Governments-West. At the time of this writing, Montana's delegation consists of Representative (now Senator-elect) Aubyn Curtiss, Representative Steve Gallus, Senator Bill Tash, and Senator Bea McCarthy. Senator McCarthy leads the group, in the wake of Senator Tom Beck's departure from the Senate to become Governor Martz's Chief Policy Advisor. Research Analyst Stephen Maly provides staff services to the delegation.

Sunrise, Sunset

As the 2001-2002 Interim draws to a close, and the contours of what promises to be an extraordinarily difficult 2003 Legislative Session take shape, this is perhaps the last chance to sum up the activities of what has become an ongoing "mini-summit" of sorts called the Legislative Council on River Governance (LCRG). But accurately and comprehensively covering an effort that got started in 1998 and has sputtered on and gathered steam ever since is beyond the scope of a brief summation in the Interim. I'll stick to a few objective themes, and end with an admittedly subjective observation.

The LCRG is so named because the Council is a group of and for state legislators. There are other organizations, large and small, weak and powerful, that are oriented to the myriad complexities of a watershed larger than France. The Columbia River Basin entails parts of Washington, Oregon, Idaho, Montana, Wyoming, Utah, Nevada, and British Columbia. There are many national governmental agencies involved in managing the area's resources; so many, in fact, that official documents now make reference to the Federal Caucus, which is shorthand for a long list that includes the U.S. Army Corps of Engineers, the Bureau of Reclamation, the Bureau of Land Management; the Bureau of Indian Affairs, the U.S. Fish & Wildlife Service (which administers the Endangered Species Act in the basin, the National Marine Fisheries Service (a branch of the U.S. Department of Commerce), the U.S. Environmental Protection Agency, and, not least, the Bonneville Power Administration, which operates the Federal Columbia River Power System (FCRPS), consisting of 31 dams connected to over 15,000 miles of transmission lines, which amounts to over 75 percent of the high-voltage transmission grid in the Pacific Northwest.

In recent months, following the electricity debacle in California and in response to consumer group complaints about price gouging and corporate corruption in the West, the Federal Energy Regulatory Commission (FERC) has also planted its flag in the region. In spite of the fact that the BPA answers to the U.S. Department of Energy, and does not (yet) fall under FERC jurisdiction, an emerging national energy policy is driving FERC to take an unusually assertive role. By mandating the creation of Regional Transmission Organizations across the country, including at least one (RTO-West) in the

Northwest, and by setting forth a Standard Market Design (SMD) for wholesale power transactions on a national basis, FERC now commands the attention of everyone involved in carrying forward a comprehensive plan for the future operations of the Bonneville system, and everyone now includes the LCRG.

Common Objectives, Leaky Vessels

The main point of all this nomenclature is to underscore the difficulty of "governing" a river like the mighty Columbia. The river and its tributaries are what binds diverse people, electricity-dependent industries, irrigated agriculture, anadromous fish, stay-at-home fish, other wildlife, and several centuries of shared history into a coherent, multi-state, transnational region. The Columbia River Basin is marbled with competing, interlocking, and in some cases overlapping jurisdictions: federal, state, local, and tribal. Because the river originates in British Columbia, a quarter of its flow crosses the 49th parallel, and the equitable sharing of this resource was hammered out in 1967 in the Columbia River Treaty between the United States and Canada, the Columbia Basin has an international dimension as well.

But that's not all: with all those agencies and acronyms and whatnot, something significant is missing, or rather WAS missing prior to the formation of the Legislative Council on River Governance. Back in 1998, federal agencies, Northwest governors, and tribal governments attempted to shape a comprehensive plan for the region under the rubric of "Three Sovereigns". A draft agreement set forth a "Columbia Basin Sovereigns Committee" composed of four state, four federal, and four tribal representatives, with a number of objectives, including collaborating on decisions, reviewing fish and wildlife recovery processes, ensuring independent scientific and economic analysis of such measures, and promoting public involvement. They neglected to consider state legislatures as a vital component of sovereignty at the state government level. This rankled.

The next official group attempt to grapple with the situation was called the Columbia River Forum, out of which floated draft federal legislation, the "Columbia Basin Fish and Wildlife Restoration Act of 2000", which would have established a Committee made up of one member from each of the Northwest states, one member representing the federal government, one member representing all the Indian tribes in the basin. (The draft bill also allowed for an ex-officio non-voting member from Canada.) This proposal didn't get very far; it was severely criticized by tribal governments, who questioned the legitimacy of a body with a single Indian purporting to represent 13 different tribes, separated from each other by hundreds of miles and many decades of distinctly different histories and relationships with the U.S. Government and with the four Northwest states.

The overarching purpose of the Columbia Basin Forum was quite similar to that of its predecessor, the Three Sovereigns--"to provide a high-level policy forum in which federal, state and tribal governments, working with interested members of the public, will address, collaborate on and coordinate basin-level policy, planning, decision-making, and implementation issues and processes that affect the Columbia River Basin fish and wildlife and related habitat." An Oregon plan to bolster and expand an interstate compact

with Washington, Idaho, and Montana, and establish a Columbia River Governance Commission with the mandate to "assess programs of state and federal agencies responsible for natural resource management issues of the Columbia River and to participate in decision-making by federal agencies affecting the use of and activities on the Columbia River."

In the past two years, Bonneville Power's struggles with drought and debt, coupled with the unfolding and then unraveling of electricity industry restructuring in California, has added a huge new dimension to governance issues in the Columbia River Basin. While the LCRG delegates from Washington, Oregon, Idaho, and Montana often disagree on the important nuances that surround prioritized lists, they've arrived at some solid, common objectives: to preserve BPA's cost-based electricity and access to it for the region as a whole; to resist outside pressures to remove regional preference for that power; to ensure that the regional transmission system is adequate and reliable; to seek increased regional influence over power and fish policies related to the Federal Columbia River Power System.

"It's a starting point for me in this issue that the four Northwest states would be better off if we had more influence on the big decisions that are made regarding fish and wildlife recovery, Bonneville's activities, and other related matters."

Governor Marc Racicot, addressing fellow Governor John Kitzhaber from Oregon at a public hearing in Portland on December 19, 2000.

Progress: Slow, Painful, Real

The Legislative Council on River Governance has no official charter. It's self-styled purpose is "to assert state legislative duty and authority over natural resources and river governance" in the Columbia Basin, and "to unite states for a proactive agenda of legislative action and communications." Pursuant to this general mission, which was crafted and endorsed in 1998, joint, bipartisan House and Senate delegations from Washington, Oregon, Idaho and Montana have convened meetings in each of the four states to discuss and debate the benefits and costs of acquiring greater regional control of and responsibility for the electricity generation and transmission systems currently managed and operated by the Bonneville Power Administration.

One of the Council's difficulties was to come up with a method for making decisions that would bind the group to its own deliberative process, reflect consensus views when possible, and give their joint pronouncements some clout. At a meeting in Whitefish, Montana in May, 2000, they arrived at a workable formula.

- Each state's official delegation will consist of 4 individuals and will have an equal number of votes--four--on any policy decision on any given occasion.
- Delegates will be appointed by legislative leadership in the respective member

states by whatever means those leaders choose. Likewise, leaders in the respective states will determine how alternate delegates will be selected (in the event of a member's absence, for example), and how, if ever, proxy votes are to be handled.

- Each delegation will select its presiding officer by whatever means are appropriate (e.g., by accepting leadership's appointment, or by a vote among the members themselves). The presiding officers from each delegation will constitute the Executive Council for the purposes of issuing communiques, performing ceremonial functions, or fulfilling as yet unspecified obligations.
- Charges for Council expenditures will be issued by CSG-West and prorated according to the number of official delegates in attendance at a meeting or function.
- Participation in Council meetings and events is not restricted to official delegates. However, policy statements or decisions are the exclusive province of official members. Moreover, on any matter that is decided by vote, each state must attain a 3/4 majority before the Council as a body may issue a pronouncement, declaration, or decision. [Example: three of the four members from Idaho, three of the four from Oregon, three of the four from Washington, and three of the four from Montana must agree before any official "act" can be "passed".]

With an agreeable method of reaching decisions in hand, the LCRG could move forward, and it did. The goals of the Council were partially realized by reaching a consensus at a meeting in Portland, Oregon, in February, 2001, on the text of a common resolution aimed at forging a stronger, more united regional coalition. The Montana Legislature passed HJR 14 (facsimiles of which have also been introduced in the legislatures of the other Northwest states), which, following nine pithy "whereas" clauses, only a few of which have been overtaken by more recent events, reads as follows:

It is hereby resolved by the undersigned members of the Legislative Council on River Governance that:

It is time for political leaders in the Northwest to organize a regional policy discussion to address the rapidly evolving situation and to develop a joint strategy to secure the benefits of the Columbia River hydroelectric system for the region.

We call upon the Governors and the Congressional Delegation of the states of Idaho, Montana, Oregon and Washington join with us and appoint a panel to determine the most effective means of achieving this shared objective;

The goal of this multi-jurisdictional discussion should be to design and develop recommendations for how best to preserve the benefits of the Federal Columbia River Power System now and following the rate period that ends in 2006.

This discussion must begin with a strong affirmation that regional and public "preference" should be preserved and maintained, and must continue to acknowledge other political and practical constraints on the range of choices available to the region's elected leaders.

This regional policy discussion should be initiated as soon as possible and should be concluded in 2001.

Needless to say, this discussion was NOT concluded anytime last year. It continues, as evidenced by recent outpourings from BPA on their financial condition and rate structures, and by the late November plea from Montana's Northwest Power Planning Commission members for Montana citizens to involve themselves in the public comment process preceding BPA's decisions on the Columbia mainstem. The document is controversial because it questions the benefit of releasing large amounts of water from Hungry Horse Reservoir and Lake Koocanusa (behind Libby Dam) to assist salmon recovery efforts downstream. There is little scientific evidence that large spills to augment flows downstream actually benefits the fish, but the costs borne in Montana are significant.

Why does it matter to Montana?

Montana's material interests in the Columbia River Basin are smaller than those of the other states. Resources located in Montana--Libby Dam and the Hungry Horse Reservoir-- are crucial to the mechanical operations of the river, but Montanans as consumers are not as reliant on Bonneville's products and services as consumers in the other Northwest states. With some exceptions involving members of rural electric cooperatives, only those citizens resident in the western third of Montana have access to BPA power; in effect, only a portion of the state is actually a part of the Pacific Northwest region. Hence, Montana as a state has less to lose than Washington, Oregon, and Idaho if indeed the Federal Columbia River Power System remains mired in the status quo or gets sliced, diced, and ultimately carved up by the U.S. Congress.

At the same time, however, Montana has much to gain, in practice and in theory, from continued access to cost-based electricity and from membership in an effective regional forum or interstate compact. The fraction of the state that is genuinely in the Pacific Northwest is also the fastest growing and most densely populated. It is worth noting that the demographic center of the state has moved westward, and the top-ranking leaders in both the state Senate and House of Representatives hail from west of the Continental Divide. People in western Montana are culturally and economically oriented to the West Coast, they will continue to need affordable energy and to value the other uses and attributes of the Columbia system. Cost-based rates still apply to many consumers of electricity in the state. Furthermore, any further erosion of control over the management of the Hungry Horse and Libby dam facilities would bring economic and environmental harm to the state, so Montana can ill afford to ignore or walk away from any legitimate attempt by regional bodies to gain autonomous decision-making power regarding Columbia River governance.

There is an historic battle being waged in the region, between proponents of a

market-based system, and defenders of a cost-based system. The system in place is regulated and overseen by elected officials in the region, and the people who run BPA view themselves as responsive and responsible residents of the Northwest. A market-based system would be overseen by FERC, in Washington, D.C. The drama at the doorstep of state governments could be characterized as the regionalization of BPA versus the nationalization of the wholesale power market. The Northwest delegations in Congress have joined the cast. An April 10, 2002 letter to the FERC signed by 22 members of the U.S. House and Senate (including Senators Baucus and Burns), asserted in clear language and detail how and why the Northwest energy grid is unique and that any attempts to impose a Regional Transmission Organization that didn't take Northwest conditions and priorities would be strongly resisted.

A parting observation

The Council has followed an uneven, uncertain path to its current plateau. What began as a defiant assertion of legitimate authority, coupled with an objective to increase regional control over and responsibility for the Northwest power system, has evolved to become an educational forum, an effective listening post, and an advisory body with less aggressive motives but a stronger grasp of complicated situation.

In the past few years, the discussions have become less partisan, and more participatory. The award presented on behalf of the Council to former Senator Tom Beck at a working dinner last September 29 symbolized a general respect for his leadership and the maturation of the Council as a place where political differences are set aside in order to focus on pragmatic solutions to shared problems in the region. As for participation, at the Council's meeting in Olympia last May, several members of the official delegations, including our own, made detailed presentations to their peers on such water rights adjudication and other important matters. On prior occasions, the Council members listened to and queried invited experts, but refrained from sharing their own expertise.

At the same time, the quality of presentations made to the Council, and the "clout" of the people providing this informal testimony, has steadily increased. In Olympia, the group was addressed by Mr. Bob Lohn, the new head of NMFS, (who happens to hail from Montana), so for the first time the agency Council members seemed most alienated from in past meetings was now present, accounted for, and directly accountable to the members' questioning. Bonneville Power's chief administrative officer Stephen Wright has spoken twice to the group, and this September the BPA was represented by Mr. Paul Norman, Senior Vice President for BPA's Power Business Line.

The most recent meeting of the LCRG was at the Capitol in Helena on September 29-30. The agenda included presentations on recent policy shifts by the Federal Energy Regulatory Commission (FERC), the Bonneville Power Administration's financial problems, the Northwest Power Planning Council's recently initiated program on sub-basin planning, the U. S. Environmental Protection Agency's implementation of Total Maximum Daily Loads (TMDL's), a part of the Clean Water Act, and the threat of nuisance species of aquatic life taking hold in the region as tourists on the Lewis & Clark

trail haul their boats westward. Governor Martz addressed the group and offered some perspective as the chair of the Western Governors Association. The meeting was attended by legislators from Idaho, Washington, and Montana. Oregon was, for the first time, not represented, on account of a spate of special sessions that interfered with the members' travel plans.

At that same meeting, the panel assembled to talk about FERC's Standard Market Design proposal, and the status of the RTO-West, included representatives from Northwestern Energy, Western Generation & Transmission Cooperatives, public utilities in Washington State, and the RTO-West itself. Their presentation was described by a learned local representative of BPA as perhaps the best she had ever heard on this difficult, complicated subject.

The meeting in Helena, following upon prior gatherings in Boise, Portland, and Seattle, also brought the legislators together with members and staff of the Northwest Power Planning Commission. The NWPPC represents the region's governor, and as such they reflect the executive dimension of states' sovereignty. (See Sidebar). Working more in synch with the NWPPC and not at cross purposes bodes well, as does the Planning Commission's new readiness to be responsive to state legislator's interests and inquiries.

So, everything's better than ever at and for the LCRG, except its prospects for continuation. Each of the four Northwest states is experiencing its own form of fiscal emergency. In essence, there may not be any money, in the upcoming biennium, for this sort of activity: everyone is short of funds, and the Washington delegation is constrained by travel restrictions. Here at home, funding for the Montana delegation for the next biennium is anything but assured. Notwithstanding the ripe possibility that the Council's stage may go dark for awhile, legislators in the Northwest states will not be ignored and the ongoing saga of governing a huge and hugely complex river basin will continue to require the attentions of citizens and elected officials throughout the region.

"The resolutions passed by the Council last year set the stage for moving forward, in concert with Governors, the Northwest Power Planning Council, and various federal and tribal agencies. A lot has changed since then. At the same time, however, many features of the political and economic landscape remain the same. The multiplicity of stakeholders in the Columbia Basin continues to complicate the task of setting forth a workable strategy for maintaining regional control over vital resources."

Letter from Council Chair and President of the Montana Senate, Tom Beck, to fellow LCRG members, April 15, 2002.

Aside: Northwest Power Planning Council

The Northwest Power Planning Council was created by Congress through the 1980 Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act) to give the citizens of Montana, Idaho, Oregon and Washington a stronger voice in determining the future of key resources common to all four states--namely, the electricity generated at, and fish and wildlife affected by, the Columbia River Basin hydropower dams. The Council consists of two representatives each from the four states. Mr. John Hines and Mr. Ed Bartlett are Governor Martz's appointees.

The main duties of the Council under the Act are to:

- Develop a regional power plan to assure the Northwest an adequate, efficient, economical and reliable power supply.
- Develop a fish and wildlife program as part of the plan to protect, mitigate, and enhance fish and wildlife affected by hydroelectric development in the Columbia Basin. The Council also makes annual funding recommendations to the Bonneville Power Administration for projects to implement the plan.
- Provide for broad public participation in these processes and inform the public about regional issues.

The Council is funded by wholesale power revenues from the BPA. Council programs are implemented by BPA, the U.S. Army Corps of Engineers, the Bureau of Reclamation, FERC, U.S. Fish and Wildlife Service, and the National Marine Fisheries Service. The Council also works with tribal, state, and local government agencies, most notably, at the time of this writing, on sub-basin plans.

The members of the NWPPC have traditionally assumed the mantle of speaking for their states, but in doing so, they have not been compelled to seek or accept the advice of their respective legislatures. The Legislative Council on River Governance has helped to bridge this gap.

THE BACK PAGE**THE GOOD, THE BAD, THE UNRESTRAINED: MONTANA'S COURTS AND POLITICS IN TERRITORIAL DAYS**

By Lisa Mecklenberg Jackson
Legislative Librarian

BLAME IT ALL ON THE ROCKS

Have you ever wondered how Montana's current court system came into being? How a rough and tumble civilization like that of 1800s frontier Montana came up with an organized, impartial system of justice? Well, it's all about the rocks. Yep, the rocks. You see, there were courts in Montana before there was any established government. These courts were called miners' courts'--and they formed the basis of Montana's present day court system. The western portion of Montana was once a part of the Oregon Territory, later a part of the Washington Territory, and still later a part of the Idaho Territory--but was so far removed from the centers of population and the seats of government of these territories that it was left ungoverned. Early inhabitants were unrestrained by any laws other than their own sense of right, and were without any legislative, executive, or judicial authority over them.²

However, early pioneers to Montana, the majority of them miners, realized soon after their arrival in the 1800s that this meant "there was no law defining a mining claim, its extent, to what the discoverer should be entitled, or the means of ownership."³ Accordingly, these early settlers organized miners' courts whose rules and regulations soon came to have the force and effect of common law for the mining region. Later when Congress began to legislate in this area, these rules of the miners were recognized as valid laws and were enforced by the courts in the adjudication of property rights.⁴

THE BUSINESS OF CRIME AND PLUNDER

Besides providing themselves with a system of mining law, the early settlers of Montana were also compelled to exercise original criminal jurisdiction. Outlaws and criminals, following closely behind the homesteaders and pioneers "hovered about the

¹ Helen Fitzgerald Sanders, A History of Montana, (Chicago, IL: The Lewis Publishing Co., 1913) p. 579.

² Sanders, op. cit., p. 579.

³ Sanders, op. cit., p. 580.

⁴ Sanders, op. cit., p. 580.

mining camps and infested the country. Their business was crime and plunder.”⁵ And they were dealt with deftly by the pioneers, who remembering the form of law in their distant homes, organized citizens’ courts with the miners’ judge to preside, formed juries, designated attorneys to prosecute and defend, and carried into execution any guilty verdicts.

In March 1862, the first lawsuit in Montana was tried in a saloon at Hell’s Gate, near modern day Missoula, before Henry Brooks, justice of the peace. Washington law governed the proceedings. A Frenchman called “Tin Cup Joe” accused Baron O’Keefe with beating one of his horses with a fork handle, then pushing him into a hole, causing his death.⁶ Tin Cup claimed damages of \$40 and sued O’Keefe for that amount. After much “unpleasantness,” the case was finally given to the jury, which ruled in the plaintiff’s favor for the \$40. Costs actually rendered the verdict to about \$90. This was probably the most hotly contested case ever tried in the territory.⁷

SUBJECT TO OUR FIRST STATUTES—IDAHO’S

Idaho was created as a territory on March 3, 1863, and included what is now Montana. It wasn’t until the Idaho legislature convened in December of that year and passed laws for the territory that people in Montana’s early settlements of Alder Gulch and Virginia City were subject to the statutes of any state or territory.

An Act of Congress approved May 26, 1864 organized the territory of Montana.⁸ The judicial power was vested in a supreme court, district courts, probate courts, and justices of the peace. The first judges of the supreme court, appointed by President Lincoln, were H.L. Hosmer, chief justice, appointed June 30, 1864; Lorenzo P. Williston, associate justice, appointed June 22, 1864, and Ammi Giddings, also appointed June 22, but declined to serve.⁹ At this time there was no governing law in Montana except the Organic Act, and this only provided for the existence of the

⁵ Sanders, *op. cit.*, p. 581.

⁶ Sanders, *op. cit.*, p. 584.

⁷ Sanders, *op. cit.*, p. 584.

⁸ In drafting the 1864 Organic Act making Montana a territory, Congress followed a system of government that had become the standard for most western territories. Law-making power was placed in the hands of the territory’s citizens through the popular election of a bicameral legislature. The upper house of the legislature was a seven-member “council” and the lower house a thirteen-member “assembly.” The Organic Act also authorized the election of a non-voting delegate to the U.S House of Representatives who would speak for the citizens’ interests. Michael P. Malone, Richard B. Roeder, and William L. Lang, *Montana: A History of Two Centuries*, (Seattle, WA: University of Washington Press, 1991) p. 97

⁹ Sanders, *op. cit.*, p. 582.

territory, leaving it to the territorial legislature, which had not yet convened, to enact laws.

DINNER ANYONE?

The first legally organized court ever held in the territory of Montana was convened in the dining room of the Planters’ House at Virginia City on the first Monday in December 1864. As Montana had most recently been part of the territory of Idaho, the district court decided to use the statutes of Idaho as applicable; otherwise the rule of common law would govern. On this day, the chief justice impaneled a grand jury, which was the first grand jury ever in the territory of what is now known as Montana.¹⁰ The district court met for about six months. One of the greatest problems that arose from this session is that there were no libraries and no precedent for many of the complex questions submitted and decided by the court. Hence, it was determined that a code was needed.

In December 1864, the first territorial legislative assembly convened at Bannack and enacted a code. This code, though somewhat crude, did prescribe rules for court procedure and supplied many provisions of substantive law. Under the Organic Act, the justices of the supreme court had the power to split the territory into judicial districts. However, no record of any apportionment can be found earlier than June 12, 1867.¹¹

The supreme court of the territory of Montana convened for the first time in May 17, 1865 at Virginia City, the then seat of government.¹² Hezekiah L. Hosmer presided as chief justice, and Lorenzo P. Williston and Lyman E. Munson served as associate justices. Prior to December 1868, the court would either enter brief or formal orders, confirming or reversing the judgments of the district courts. Hence, the first volume of case reports by the supreme court of the territory of Montana contains the written opinions of the judges from the beginning of the December term, 1868, to the end of the January term, 1873.¹³

¹⁰ Sanders, *op. cit.*, p. 582.

¹¹ Sanders, *op. cit.*, p. 583.

¹² Sanders, *op. cit.*, p. 587. The first question that was brought to the supreme court was whether Robert Hill, who had been appointed by Governor Edgerton to the office of county recorder, or R.M. Hagerman, the appointee of the miners to the same office, was entitled to that office until an election should be had under legislative enactment. The court decided in favor of Hagerman by a majority decision; the chief justice and Associate Justice Williston concurring in the majority opinion, while Judge Munson dissented. Thus the first decision of the territory of Montana was by a divided court.

¹³ Sanders, *op. cit.*, p. 591. By an act of the legislature passed January 4, 1872, the publication of the opinions of the judges of the supreme court were provided for, and all the opinions since have been written, filed, and published.

The second and third legislative assemblies of the territory of Montana convened and completed their work before the end of 1866, but Congress afterwards abrogated all laws passed by these assemblies.¹⁴ In 1867 the fourth legislative assembly convened and enacted what has commonly been called the California Practice Act.¹⁵ The Bannack statutes were not printed until 1866, and those of the session of 1867 were not printed until the summer of 1868.

MONTANA BECOMES A STATE—AFTER THREE TRIES

The Enabling Act¹⁶ authorized the territories of Montana, Dakota, and Washington to become the states of Montana, North Dakota, South Dakota, and Washington upon the adoption and ratification of state constitutions. Consequently, a constitutional convention was held in Helena from July 4, 1889 to August 17, 1889. At the October 1889 general election, voters ratified the constitution by a vote of 26,950 to 2,274.¹⁷ On November 8, 1889, Montana was formerly admitted as the forty-first state.¹⁸

It should be noted that Montana's 1889 Constitution was the culmination of three formal instruments drafted during the process of achieving statehood. Two previous attempts to gain statehood were made through citizen initiative in 1866 and 1884.¹⁹

¹⁴ Under the Organic Act it was the duty of the first legislative assembly to provide for the apportionment of territory into districts for the election of members of the council and lower house of the second session of the legislature. The first legislature failed to do this, but did provide for the election of the members of the second legislature. This oversight of the first legislature was brought in question by a court case in which the supreme court of the territory held that the second and third legislative sessions were illegal. Afterwards Congress approved the opinion of the court, and Congress annulled all the acts of the second and third legislative assemblies.

¹⁵ Sanders, *op. cit.*, p. 586.

¹⁶ February 22, 1889, Chapter 180, 25 Stat. 676.

¹⁷ The 1889 Constitution was enacted more as a tool to achieve statehood than to provide a well-thought-out structure of governance for the new state. Larry M. Elison and Fritz Snyder, *The Montana State Constitution*, (Westport, CT: Greenwood Press, 2000) p. 4. The delegates, not surprisingly, were driven by self-interest and concerns about government abuse of power. Typical of state constitutions of the time, the Montana Constitution minimized the powers of the executive branch and maximized the powers of the legislature.

¹⁸ *Encyclopedia of Montana*, (Santa Barbara, CA: Somerset Publishers, Inc., 2000) p. 41.

¹⁹ *We, The People...an Introduction to the Montana Constitution Convention*, (Bozeman, MT: Montana State University, 1971) p. 15. **Convention of 1866** – Montana's first convention was called by Acting Governor Thomas Frances Meagher after only two years of territorial status. In the first of many irregularities, this convention did not meet at the Capital in Virginia City, but in Helena. At the end of the sixth day, the 55-member convention adjourned—no public money was available to keep it going. The only copy of the 1866 Constitution was lost, never printed or

In 1875 Helena became the capital of the territory and thereafter the supreme court sat in Helena.²⁰

AND LET THERE BE...A CODE

By an act of the legislature of the territory, passed in 1869, the judges of the supreme court were appointed to a commission to codify and arrange the statutes. The result of the work is the "Codified Statutes, Seventh Session, 1871-2."²¹ After the codification of these laws by Judges Warren, Knowles, and Symes, the statutes were again revised in 1879 and in 1887. In 1889 an act of the territorial legislature was passed authorizing the creation of a code commission to prepare and submit to the legislature four codes: a civil code, a penal code, a code of civil procedure, and a political code.²² The codes were finally adopted by the state legislature in 1895.²³ The State Bar of Montana, organized in Helena on January 8, 1885, deserves much of the credit for that adoption, having "agitated for the codification of the laws" after the report of the code commission and until the admission of the codes in 1895.²⁴

presented to the voters for ratification. However, historian Margery H. Brown believes the 1866 convention made some positive contributions to constitution-building in Montana. "Although there were no immediate results of the 1866 convention, it did launch concern for statehood at a very early point in the territory's development. Montana remained more persistent than any of its neighboring territories in seeking enabling legislation from Congress to call a new convention, and the Montana legislature acted on its own initiative in assembling the convention of 1884."

Convention of 1884 – Dissatisfied with the treatment of territories by Congress, a second convention was called in Helena on January 2, 1884. This time, 45 delegates deliberated for 27 days. The completed draft was signed on February 9, 1884, and was ratified by voters in the November 1884 general election by a vote of 15,506 to 4,266. But Montana's bid for statehood was the victim of political disputes in Congress, which wanted no changes in the party balance in the Senate or electoral college. However, this convention was essential as an estimated 90 percent of the text of the constitutional articles framed in 1884 were incorporated in the 1889 constitution and remain the substance of Montana's fundamental law to this day.

²⁰ Until the removal of the capital to Helena, all sittings of the supreme court were at Virginia City.

²¹ Sanders, *op. cit.*, p. 592.

²² Sanders, *op. cit.*, p. 597.

²³ In February 1892, the code commission completed its labors and submitted the result to the legislative assembly in January 1893, with the recommendation that the four codes be enacted into law. However, the legislature adjourned without taking action on the codes.

²⁴ Sanders, *op. cit.*, p. 601. Had the Bar Association of Montana accomplished nothing else in all the years of its existence from its inception until the current time, it would still be entitled to the lasting gratitude of the people of Montana for bringing about the codification of the common law.

First there were the miners, establishing their own crude, but functional, court system. Then, for the first 22 years under the territorial government of Montana, there were three judges to conduct all the business of the supreme court, the district courts, and the United States district courts. During the last three years of territorial existence, there were four judges. In Montana today there are seven supreme court justices and numerous district, municipal, and city judges. Although much has changed in the last 150 years of Montana's legal history, but it can surely be said that The Big Sky State has been fortunate in the judges of her courts, both territorial and state.

CHRONOLOGY OF MONTANA'S TERRITORIAL DAYS

1852

- Francois Finlay finds gold on what is now Gold Creek, between Garrison and Drummond.

1863

- May 28. Edgar-Fairweather party discovers gold in Alder Gulch, near present site of Virginia City.
- Idaho Territory is organized, including Montana.

1864

- May 26. Montana Territory is created; Bannack is first capital.
- July 14. Gold is discovered in Last Chance Gulch, present site of Helena.
- December 12. First territorial legislature meets at Bannack.

1865

- February 5. Original nine counties of Montana are established.
- February 7. Virginia City becomes territorial capital.

1866

- First constitutional convention meets at Helena.

1875

- Seat of government is moved from Virginia City to Helena.

1884

- January 14-February 9. Second constitutional convention meets in Helena.
- November 4. Constitution is ratified; Congress is asked to admit Montana as a state.

1889

- July 4. Third constitutional convention meets at Helena.
- October 1. New constitution is ratified.
- November 8. President Harrison's proclamation announces admission of Montana as 41st state in the union.
- November 23. First state legislature convenes at Helena.

1894

- Helena, competing with Anaconda, wins election as the capital city of Montana.

1899

- July 4. Cornerstone of Capitol at Helena is laid.



INTERIM CALENDAR

UNLESS OTHERWISE SPECIFIED,
ALL ROOM DESIGNATIONS ARE IN THE CAPITOL BLDG.

DECEMBER

December 16, LAWS training, state agencies/general public, Room 102, 9-11 a.m.

December 18, Legislative Audit Committee, Room 102

December 19, LAWS training, state agencies/general public, Room 102, 9-11 a.m.

JANUARY

January 4, LAWS training, general public, Room 102, 10-12 a.m.